

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 907

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 TO  
CLARIFY INVESTMENT GUIDELINES PURSUANT TO THE UNIFORM PRUDENT  
INVESTOR ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957,  
Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--  
INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and  
restrictions contained in policy-making regulations or  
resolutions adopted by the council and subject to prior  
authorization by the council, the state investment officer may  
make purchases, sales, exchanges, investments and reinvestments

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underscored material = new  
[bracketed material] = delete

1 of the assets of all funds administered under the supervision  
2 of the council. The state investment officer shall see that  
3 money invested is at all times handled in the best interests of  
4 the state.

5 B. Securities or investments purchased or held may  
6 be sold or exchanged for other securities and investments;  
7 provided, however, that no sale or exchange shall be at a price  
8 less than the going market at the time the securities or  
9 investments are sold or exchanged.

10 C. ~~[In purchasing bonds, the state investment~~  
11 ~~officer shall require a certified or original written opinion~~  
12 ~~of a reputable bond attorney or the attorney general of the~~  
13 ~~state certifying the legality of the bonds to be purchased;~~  
14 ~~provided, however, this written opinion may be the approving~~  
15 ~~legal opinion ordinarily furnished with the bond issue.] Assets~~  
16 of the land grant permanent funds and other funds managed by  
17 the state investment officer may be combined for investment in  
18 common pooled funds to effectuate efficient management.

19 D. The state investment officer shall formulate and  
20 recommend to the council for approval investment regulations or  
21 resolutions pertaining to the kind or nature of investments and  
22 limitations, conditions and restrictions upon the methods,  
23 practices or procedures for investment, reinvestment, purchase,  
24 sale or exchange transactions that should govern the activities  
25 of the investment office.

1           E. The council shall meet at least once each month,  
2 and as often as exigencies may demand, to consult with the  
3 state investment officer concerning the work of the investment  
4 office. The council shall have access to all files and records  
5 of the investment office and shall require the state investment  
6 officer to report on and provide information necessary to the  
7 performance of council functions. The council may hire one or  
8 more investment management firms to advise the council with  
9 respect to the council's overall investment plan for the  
10 investment of all funds managed by the investment office and  
11 pay reasonable compensation for such advisory services from the  
12 assets of the applicable funds, subject to budgeting and  
13 appropriation by the legislature. The terms of any such  
14 investment management services contract shall incorporate the  
15 statutory requirements for investment of funds under the  
16 council's jurisdiction.

17           F. For the purposes of the investment of all funds  
18 managed by the investment office, the state investment officer  
19 shall manage the funds in accordance with the prudent investor  
20 rule set forth in the Uniform Prudent Investor Act. With the  
21 approval of the council, the state investment officer may  
22 employ investment management services to invest the funds and  
23 may pay reasonable compensation for investment management  
24 services from the assets of the applicable funds, subject to  
25 budgeting and appropriation by the legislature.

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1           G. For funds available for investment for more than  
2 one year, the state investment officer may contract with any  
3 state agency to provide investment advisory or investment  
4 management services, separately or through a pooled investment  
5 fund, provided the state agency enters into a joint powers  
6 agreement with the council and that state agency pays at least  
7 the direct cost of such services. Notwithstanding any  
8 statutory provision governing state agency investments, the  
9 state investment officer may invest funds available from a  
10 state agency pursuant to a joint powers agreement in any type  
11 of investment permitted for the land grant permanent funds  
12 under the prudent investor rule. In performing investment  
13 services for a state agency, the council and the state  
14 investment officer are exempt from the New Mexico Securities  
15 Act of 1986. As used in this subsection, "state agency" means  
16 any branch, agency, department, board, instrumentality,  
17 institution or political subdivision of the state, the New  
18 Mexico finance authority and any tax-exempt private endowment  
19 entity whose sole beneficiary is a state agency. "

20           Section 2. Section 6-8-9 NMSA 1978 (being Laws 1957,  
21 Chapter 179, Section 9, as amended) is amended to read:

22           "6-8-9. SECURITIES AND INVESTMENT. -- [A.] Money made  
23 available from the land grant permanent funds for investment  
24 [~~for a period in excess of one year may~~] shall be invested [~~in~~  
25 ~~the following classes of securities and investments:~~

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1                   ~~(1) bonds, notes or other obligations of the~~  
 2 ~~United States government, its agencies, government-sponsored~~  
 3 ~~enterprises, corporations or instrumentalities and that portion~~  
 4 ~~of bonds, notes or other obligations guaranteed as to principal~~  
 5 ~~and interest and issued by the United States government, its~~  
 6 ~~agencies, government-sponsored enterprises, corporations or~~  
 7 ~~instrumentalities or issued pursuant to acts or programs~~  
 8 ~~authorized by the United States government;~~

9                   ~~(2) bonds, notes, debentures and other~~  
 10 ~~obligations issued by the state of New Mexico or a municipality~~  
 11 ~~or other political subdivision of the state that are secured by~~  
 12 ~~an investment grade bond rating from a national rating service,~~  
 13 ~~pledged revenue or other collateral or insurance necessary to~~  
 14 ~~satisfy the standard of prudence set forth in Section 6-8-10~~  
 15 ~~NMSA 1978;~~

16                   ~~(3) bonds, notes, debentures, instruments,~~  
 17 ~~conditional sales agreements, securities or other evidences of~~  
 18 ~~indebtedness of any corporation, partnership or trust organized~~  
 19 ~~and operating within the United States rated not less than Baa~~  
 20 ~~or BBB or the equivalent by a national rating service;~~

21                   ~~(4) bonds, notes, debentures, instruments,~~  
 22 ~~conditional sales agreements, securities or other evidences of~~  
 23 ~~indebtedness rated not less than BB or B or the national~~  
 24 ~~association of insurance commissioners' equivalent by a~~  
 25 ~~national rating service. An investment made under this~~

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1 ~~paragraph shall be in publicly traded debt issues with an~~  
2 ~~outstanding par value of at least one hundred million dollars~~  
3 ~~(\$100,000,000) and issued by a corporation, partnership or~~  
4 ~~trust listed on a national exchange and organized and operating~~  
5 ~~within the United States; provided that investments made~~  
6 ~~pursuant to this paragraph shall not exceed three percent of~~  
7 ~~the market value of the land grant permanent funds, calculated~~  
8 ~~at the time of investment;~~

9 ~~(5) notes or obligations securing loans or~~  
10 ~~participation in loans to business concerns or other~~  
11 ~~organizations that are obligated to use the loan proceeds~~  
12 ~~within New Mexico, to the extent that loans are secured by~~  
13 ~~first mortgages on real estate located in New Mexico and are~~  
14 ~~further secured by an assignment of rentals, the payment of~~  
15 ~~which is fully guaranteed by the United States in an amount~~  
16 ~~sufficient to pay all principal and interest on the mortgage;~~

17 ~~(6) common and preferred stocks and~~  
18 ~~convertible issues of any corporation; provided that it has~~  
19 ~~securities listed on one or more national stock exchanges or~~  
20 ~~included in a nationally recognized list of stocks; and~~  
21 ~~provided further that the fund shall not own more than five~~  
22 ~~percent of the voting stock of any company;~~

23 ~~(7) real estate investments, including real~~  
24 ~~property and undivided interests in real property, debt~~  
25 ~~instruments secured by first liens on real property or limited~~

1 ~~partnership interests; provided that the total value of~~  
2 ~~investments made under this paragraph shall not exceed three~~  
3 ~~percent of the market value of the land grant permanent funds,~~  
4 ~~calculated at the time of investment;~~

5 ~~(8) securities of non-United States~~  
6 ~~governmental, quasi-governmental, partnership, trust or~~  
7 ~~corporate entities, and these may be denominated in foreign~~  
8 ~~currencies; provided:~~

9 ~~(a) aggregate non-United States~~  
10 ~~investments shall not exceed fifteen percent of the book value~~  
11 ~~of the land grant permanent funds;~~

12 ~~(b) for non-United States stocks and~~  
13 ~~non-United States bonds and notes, issues permitted for~~  
14 ~~purchase shall be limited to those issues traded on a national~~  
15 ~~stock exchange or included in a nationally recognized list of~~  
16 ~~stocks or bonds;~~

17 ~~(c) currency contracts may be used for~~  
18 ~~investing in non-United States securities only for the purpose~~  
19 ~~of hedging foreign currency risk and not for speculation;~~

20 ~~(d) the investment management services~~  
21 ~~of a trust company or national bank exercising trust powers or~~  
22 ~~of an investment counseling firm may be employed; and~~

23 ~~(e) reasonable compensation for~~  
24 ~~investment management services and other administrative and~~  
25 ~~investment expenses related to these investments shall be paid~~

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1 ~~directly from the assets of the funds, subject to budgeting and~~  
2 ~~appropriation by the legislature; and~~

3 ~~(9) stocks or shares of a diversified~~  
4 ~~investment company registered under the federal Investment~~  
5 ~~Company Act of 1940, as amended, and listed securities of long-~~  
6 ~~term unit investment trusts or individual, common or collective~~  
7 ~~trust funds of banks or trust companies that invest primarily~~  
8 ~~in equity securities authorized in Paragraphs (6) and (8) of~~  
9 ~~this subsection; provided that the investment company has total~~  
10 ~~assets under management of at least one hundred million dollars~~  
11 ~~(\$100,000,000); and provided further that the council may allow~~  
12 ~~reasonable administrative and investment expenses to be paid~~  
13 ~~directly from the assets derived from these investments,~~  
14 ~~subject to budgeting and appropriation by the legislature.~~

15 ~~B. Not more than sixty-five percent of the book~~  
16 ~~value of the land grant permanent funds shall be invested at~~  
17 ~~any given time in securities described in Paragraphs (6), (8)~~  
18 ~~and (9) of Subsection A of this section, and no more than ten~~  
19 ~~percent of the book value of the land grant permanent funds~~  
20 ~~shall be invested at any given time in securities described in~~  
21 ~~Paragraph (3) of Subsection A of this section that are rated~~  
22 ~~Baa or BBB. Assets of the land grant permanent funds may be~~  
23 ~~combined for investment in common pooled funds to effectuate~~  
24 ~~efficient management.~~

25 ~~C. Commissions paid for the purchase and sale of~~

1 ~~any security shall not exceed brokerage rates prescribed and~~  
 2 ~~approved by national stock exchanges or by industry practice]~~  
 3 pursuant to the Uniform Prudent Investor Act and an investment  
 4 policy adopted by the council that covers each investment  
 5 application."

6 Section 3. Section 6-8-20 NMSA 1978 (being Laws 1987,  
 7 Chapter 219, Section 3, as amended) is amended to read:

8 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE  
 9 CREATED-- MEMBERSHIP-- DUTIES-- TERMS-- LIABILITIES-- CONFLICT OF  
 10 INTEREST.--

11 A. There is created the "private equity investment  
 12 advisory committee" to the council. The committee consists of  
 13 the state investment officer, a member of the council appointed  
 14 by the governor and three members who are qualified by  
 15 competence and experience in finance and investment and  
 16 knowledgeable about the private equity investment process and  
 17 who are appointed by the governor.

18 B. Members appointed by the governor, except the  
 19 council member, shall be appointed for three-year terms;  
 20 provided that the terms of the initial committee members shall  
 21 be staggered so that the term of one member expires each year.  
 22 After the initial appointments, all governor-appointed members  
 23 shall be appointed for three-year terms. Members shall serve  
 24 until their successors are appointed. A vacancy occurring  
 25 other than by expiration of term shall be filled in the same

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1 manner as the original appointment, but only for the unexpired  
2 term.

3 C. The committee shall review and make  
4 recommendations to the council on private equity and film  
5 investments authorized pursuant to Sections [~~6-8-21, 7-27-5.6,~~  
6 ~~7-27-5.15 and 7-27-5.26~~] 6-8-9 and 7-27-5 NMSA 1978 and shall  
7 advise the council in matters and policies related to such  
8 investments. The committee shall establish policies for  
9 [~~national~~] private equity [~~fund~~] investments [~~New Mexico~~  
10 ~~private equity fund investments~~] and New Mexico film [~~private~~  
11 ~~equity fund~~] investments not less often than annually and shall  
12 make copies available to interested parties.

13 D. Members of the committee shall receive per diem  
14 and mileage as provided for nonsalaried public officers in the  
15 Per Diem and Mileage Act and shall receive no other  
16 compensation, perquisite or allowance.

17 E. The committee shall elect annually a chairman  
18 from among its members and may elect other officers as  
19 necessary. The committee shall meet upon the call of the  
20 chairman or the state investment officer.

21 F. Members of the committee are public employees  
22 within the meaning of the Tort Claims Act and are entitled to  
23 all immunity and indemnification provided under that act.

24 G. No person may be a member of the committee if  
25 any recommendation, action or decision of the committee will or

1 is likely to result in direct, measurable economic gain to that  
2 person or his employer.

3 H. The state investment officer may enter into  
4 contracts with investment advisors for private equity [~~fund~~]  
5 investments and film [~~fund~~] investments authorized pursuant to  
6 Sections [~~6-8-21, 7-27-5.6, 7-27-5.15 and 7-27-5.26~~] 6-8-9 and  
7 7-27-5 NMSA 1978 and may pay budgeted expenses for the advisors  
8 from the assets of any fund administered under the supervision  
9 of the council, as applicable. "

10 Section 4. Section 7-27-5.15 NMSA 1978 (being Laws 1990,  
11 Chapter 126, Section 5, as amended by Laws 2001, Chapter 238,  
12 Section 1 and by Laws 2001, Chapter 252, Section 10) is amended  
13 to read:

14 "7-27-5.15. [~~NEW MEXICO PRIVATE EQUITY FUND AND~~] SMALL  
15 BUSINESS INVESTMENTS. --

16 [~~A. No more than three percent of the market value~~  
17 ~~of the severance tax permanent fund may be invested in New~~  
18 ~~Mexico private equity funds under this section.~~

19 [~~B. If an investment is made under Subsection A of~~  
20 ~~this section, not more than fifteen million dollars~~  
21 ~~(\$15,000,000) of the amount authorized for investment pursuant~~  
22 ~~to Subsection A of this section shall be invested in any one~~  
23 ~~New Mexico private equity fund. The amount invested in any one~~  
24 ~~New Mexico private equity fund shall not exceed fifty percent~~  
25 ~~of the committed capital of that fund.~~

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1           ~~C. In making investments pursuant to Subsection A~~  
2 ~~of this section, the council shall give consideration to~~  
3 ~~investments in New Mexico private equity funds whose~~  
4 ~~investments enhance the economic development objectives of the~~  
5 ~~state.~~

6           ~~D. The state investment officer shall make~~  
7 ~~investments pursuant to Subsection A of this section only upon~~  
8 ~~approval of the council and upon review of the recommendation~~  
9 ~~of the private equity investment advisory committee. The state~~  
10 ~~investment officer is authorized to make investments pursuant~~  
11 ~~to Subsection A of this section contingent upon a New Mexico~~  
12 ~~private equity fund securing paid-in investments from other~~  
13 ~~accredited investors for the balance of the minimum committed~~  
14 ~~capital of the fund.~~

15           ~~E. As used in this section:~~

16                   ~~(1) "committed capital" means the sum of the~~  
17 ~~fixed amounts of money that accredited investors have obligated~~  
18 ~~for investment in a New Mexico private equity fund and which~~  
19 ~~fixed amounts may be invested in that fund on one or more~~  
20 ~~payments over time; and~~

21                   ~~(2) "New Mexico private equity fund" means any~~  
22 ~~limited partnership, limited liability company or corporation~~  
23 ~~organized and operating in the United States and maintaining an~~  
24 ~~office staffed by a full-time investment officer in New Mexico~~  
25 ~~that.~~

1                   ~~(a) has as its primary business activity~~  
2 ~~the investment of funds in return for equity in or debt of~~  
3 ~~businesses for the purpose of providing capital for start-up,~~  
4 ~~expansion, product or market development, recapitalization or~~  
5 ~~similar business purposes;~~

6                   ~~(b) holds out the prospects for capital~~  
7 ~~appreciation from such investments;~~

8                   ~~(c) has a minimum committed capital of~~  
9 ~~fifteen million dollars (\$15,000,000);~~

10                   ~~(d) has at least one full-time manager~~  
11 ~~with at least three years of professional experience in~~  
12 ~~assessing the growth prospects of businesses or evaluating~~  
13 ~~business plans and who has established permanent residency in~~  
14 ~~the state;~~

15                   ~~(e) is committed to investing or helps~~  
16 ~~secure investing by others in an amount at least equal to the~~  
17 ~~total investment made by the state investment officer in that~~  
18 ~~fund pursuant to this section, in businesses with a principal~~  
19 ~~place of business in the state and that hold promise for~~  
20 ~~attracting additional capital from individual or institutional~~  
21 ~~investors nationwide for businesses in the state; and~~

22                   ~~(f) accepts investments only from~~  
23 ~~accredited investors as that term is defined in Section 2 of~~  
24 ~~the federal Securities Act of 1933, as amended, (15 U.S.C.~~  
25 ~~Section 77(b)) and rules and regulations promulgated pursuant~~

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1 ~~to that section.~~

2 F.] The state investment officer shall make a  
3 commitment to the small business investment corporation  
4 pursuant to the Small Business Investment Act to invest one-  
5 fourth [~~of one~~] percent of the market value of the severance  
6 tax permanent fund by July 1, 2001 to create new job  
7 opportunities by providing land, buildings or infrastructure  
8 for facilities to support new or expanding businesses. If  
9 invested capital in the small business investment corporation  
10 should at any time fall below one-fourth [~~of one~~] percent of  
11 the market value of the severance tax permanent fund, further  
12 commitments shall be made until the invested capital is equal  
13 to one-fourth [~~of one~~] percent of the market value of the fund.  
14 As used in this subsection, "invested capital" means the  
15 original capital contributed less any return of cost by the  
16 private equity funds."

17 Section 5. A new section of Chapter 7, Article 27 NMSA  
18 1978 is enacted to read:

19 "[NEW MATERIAL] SECURITIES AND INVESTMENT. -- Money made  
20 available from the severance tax permanent fund for investment  
21 shall be invested pursuant to the Uniform Prudent Investor Act  
22 and investment policy adopted by the council that covers each  
23 investment application."

24 Section 6. REPEAL. -- Sections 6-8-10, 6-8-18, 6-8-19,  
25 6-8-21 and 7-27-5 through 7-27-5.25 NMSA 1978 (being Laws 1957,  
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1 Chapter 179, Section 10, Laws 1970, Chapter 2, Section 2, Laws  
2 1987, Chapter 126, Section 1, Laws 1997, Chapter 183, Section  
3 5, Laws 1983, Chapter 306, Sections 7, 8 and 10 through 12,  
4 Laws 1987, Chapter 219, Section 2, Laws 1989, Chapter 265,  
5 Section 3, Laws 1990, Chapter 126, Sections 4 and 5, Laws 1990,  
6 Chapter 127, Section 10, Laws 1990 (2nd S.S.), Chapter 3,  
7 Section 2, Laws 1993, Chapter 267, Sections 1 through 3, Laws  
8 1995, Chapter 155, Section 36, Laws 1995, Chapter 215, Section  
9 2, Laws 1997, Chapter 45, Section 3, Laws 1997, Chapter 178,  
10 Section 3 and Laws 2000, Chapter 5, Section 4, as amended) are  
11 repealed.

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